

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 2002-343

March 12, 2003

BANGOR HYDRO-ELECTRIC COMPANY
Request to Construct Transmission Line of
100 or More Kilovolts Between the Chester
Substation and the East Millinocket Substation

ORDER DENYING
MOTION TO EXCLUDE
TESTIMONY

In its February 26 case management memorandum, the IECG states that it will offer the testimony of Dr. Richard Silkman. In general, Dr. Silkman's testimony will be offered to show long-standing interest by the State of Maine in maintaining the "close relationship" between the hydro electric system formerly owned by Great Northern Paper Company and the paper mill. Dr. Silkman also will testify that the proposed transmission line will adversely impact the continued operation of the paper mill, concluding that the mill will not be viable under current electricity market conditions. Lastly, Dr. Silkman will describe how the closure of the paper mill will negatively impact Bangor Hydro Electric Company (BHE) and its ratepayers.

On March 3, BHE moved *in limine* to exclude the testimony of Dr. Silkman. BHE asserts that Dr. Silkman's proffered testimony concerns matters that are legally irrelevant to the need question that the Commission must address in deciding whether to grant BHE a Certificate of Public Convenience and Necessity (CPCN) to build the transmission line. BHE cites *Re: Houlton Water Company*, 160 PUR 4th 483 (Me PUC 1995) to support its position. In *Houlton*, Houlton Water Company (HWC) sought a CPCN to enter into a wholesale power contract with CMP. MPS, which had been HWC's wholesale supplier, intervened and asked the Commission to consider evidence on the adverse impact on MPS's rates if the Commission approved the CMP-HWC contract. The Commission decided that MPS's rates were beyond the scope of the HWC certificate proceeding, concluding that "such far-reaching inquires" were "fraught with policy implications..." *Id* at 491.

BHE also argues that Dr. Silkman's opinions, if adopted, run counter to the legislative policy expressed in the Restructuring Act, and recent Commission decisions in CPCN proceedings involving transmission lines needed to connect new generators to the New England electric grid.

The IECG, as well as Paper, Allied-Industrial, Chemical and Energy Workers International Union AFL-CIO, CLC (PACE) and the Public Advocate (OPA), oppose BHE's Motion. Generally, the opposition parties assert that BHE's Motion defines the "public need" test too narrowly, even in the post-restructuring world. They argue that setting just and reasonable rates is the core function of the Commission, and accordingly, the Commission must always consider rate impacts when assessing public need in a CPCN proceeding. Accordingly, they conclude that Dr. Silkman's testimony should be admitted, and when the Commission performs the balancing test that it must

use when assessing public need, the Commission must decide what weight to give Dr. Silkman's testimony.

The Examiner denies BHE's Motion to exclude the testimony of Dr. Silkman. Even after electric restructuring, the public need standard in a transmission CPCN case should require that the Commission at least consider adverse impacts on the ratepayers of the utility seeking the certificate; particularly in the first instance such an issue has been raised.

The Examiner disagrees that recent CPCN decisions involving post-restructuring requests for a transmission line by new, non-utility power plants redefine public need to mean only electrical need for the line. See e.g. *Central Maine Power Company (CMP)*, Docket No. 98-863 (March 12, 1999) (the Rumford case). It is true that restructuring rendered some "public interest" issues irrelevant, such as whether the line produced the least cost supply option.

In a least cost supply sense, the need for the line is presumed. However, the Commission in the Rumford case, and in the Veazie case cited by BHE, did not decide that ratepayer impacts were irrelevant. Rather, in those cases, adverse impacts were neither apparent nor raised by any party. Indeed, in the Rumford decision (at p.6), the Commission even mentioned that the Rumford line was not expected to cause any significant cost increase to CMP's ratepayers, and left for another case the issue of whether a significant rate increase might warrant rejection of a transmission line built solely to connect a generator to the transmission system. The Examiner reads that Rumford dicta as support for the position that an issue such as is raised by Dr. Silkman's testimony is a proper issue for consideration, even though the Commission may decide to grant a certificate even if adverse rate impacts occur.

The Examiner agrees that the *Houlton* case cited by BHE is supportive of its Motion. However, the case is readily distinguishable because in *Houlton*, the Commission refused to hear evidence on the issue of impact on ratepayers of a utility that was not the utility seeking the certificate. The Examiner will not rely on *Houlton* to exclude evidence about BHE's rates in a BHE certificate case. The IECG should get the opportunity to convince the Commission that adverse BHE ratepayer impacts will occur if the Commission grants the certificate, and that those adverse impacts warrant a denial of the certificate. Similarly, BHE should be allowed to demonstrate that adverse ratepayer impacts will not occur, or are too speculative, and/or that, even if adverse impact may occur, that sound public policy dictates that the Commission grant the certificate in this case.

The remainder of BHE's arguments really go the weight that should be accorded Dr. Silkman's testimony, not its admissibility. Accordingly, BHE's Motion to exclude Dr. Silkman's testimony is denied.

Dated at Augusta, Maine this 12th day of March, 2003.

BY ORDER OF THE HEARING EXAMINER

James B. Buckley